

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

LARRY FITZPATRICK,)	Case No.: 2:07-CV-528
)	
Plaintiff,)	MOTION TO WITHDRAW ADMISSIONS
)	
vs.)	
)	
CITY OF MONTGOMERY,)	
)	
Defendant)	

COMES NOW the undersigned Wallace D. Mills, as attorney for the City of Montgomery, and in accordance with Rule 36(b) of the *Federal Rules of Civil Procedure* moves this Honorable Court to grant the City of Montgomery leave to withdraw those admissions deemed to have been made by operation of Rule 36(a) of the *Federal Rules of Civil Procedure* for failure of the City to timely respond to the plaintiff's Request for Admissions, and as grounds therefore show as follows:

1. The plaintiff served upon the defendant a Request for Admissions on October 4, 2007;
2. The defendant, for reasons for which this writer takes full responsibility, failed to respond to the Request for Admission within the 30 days allowed by Rule 36(a) *Federal Rules of Civil Procedure*;
3. The admissions are deemed to have been made by operation of Rule 36(a);
4. The "presentation of the merits of the action will be subserved" by the admissions if the defendant is not allowed to withdraw the passive admission and allowed to either admit or deny the requests as may be appropriate. *36(b) Fed. R. Civ. P.*

5. The plaintiff will not be materially prejudiced by the withdrawal of the passive admissions because the requests are only 22 days past due as of this writing, and because there is ample time to complete discovery in this case.

Respectfully submitted this the 28th day of November, 2007.

/s/ Wallace D. Mills
Wallace D. Mills (MIL 090)
Attorney for City of Montgomery

OF COUNSEL:
City of Montgomery Attorney's Office
103 North Perry St., Rm. 200
Montgomery, AL 36104
(334) 241-2050

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of November, 2007, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system which will send notification of such filing to the following parties or counsel:

Joseph Charles Guillot, Esq.
McPhillips Shinbaum LLP
P.O. Box 64
Montgomery, AL 36101-0064

and I hereby certify that I have also mailed by United States Postal Service the document to the above-named non-CM/ECF participants:

/s/ Wallace D. Mills
OF COUNSEL